

AN ORDINANCE

AN ORDINANCE AMENDING CHAPTER 6, ALCOHOLIC BEVERAGES OF THE COUNTY OF HABERSHAM, GEORGIA CODE OF ORDINANCES IN ITS ENTIRETY; TO PROVIDE FOR THE LICENSING AND REGULATION OF WHOLESALE AND RETAIL SALES OF MALT BEVERAGES AND WINE BY PACKAGE; TO PROVIDE FOR LICENSING AND REGULATION OF THE SALE OF MALT BEVERAGES AND WINE BY THE DRINK FOR CONSUMPTION ON THE PREMISES; TO PROVIDE FOR ENFORCEMENT THEREOF; TO PROVIDE FOR PENALTIES; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND FOR OTHER PURPOSES.

Be it ordained by the Board of Commissioners for Habersham County, Georgia:

Section 1. Amendment.

Chapter 6 of Habersham County, Georgia Code of Ordinances shall be amended in its entirety as provided on Exhibit "A" attached hereto.

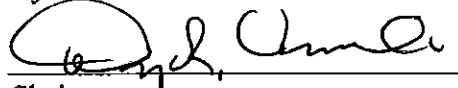
Section 2. Effective Date.

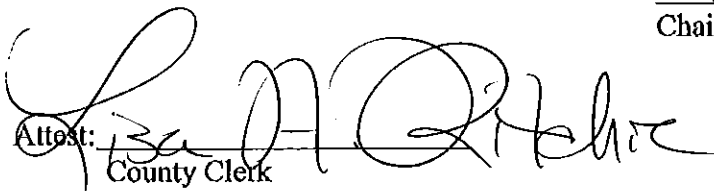
This ordinance shall become effective on the 21st day of June, 2010.

Section 3. Repealer.

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Ordained this 21st day of June, 2010 by the Board of Commissioners of Habersham County, Georgia.


Chairman

Attest: 
County Clerk

[SEAL]

CHAPTER 6 ALCOHOLIC BEVERAGES

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ARTICLE I. GENERAL RULES AND REGULATIONS

Sec. 6-1. General policies and purpose.

(a) Alcoholic beverages may be sold in Habersham County only after the issuance of a license for such sale by the county and only in the manner permitted by said license. Alcoholic beverages may be sold in the county only by a licensee who complies with the rules and regulations of this chapter, and with the licensing, regulatory and revenue requirements of the State of Georgia.

(b) All licenses granted by the county for the sale of alcoholic beverages are a mere grant or privilege subject to all terms and conditions imposed by the county ordinance and state law and subject to being revoked by the Board of Commissioners of Habersham County.

(c) Each licensee of the county shall display the license prominently at all times at the outlet for which the license is issued. A separate license must be issued for each outlet of sale and a separate application must be made for each outlet.

(d) The purposes of this chapter include, but are not limited to, the following:

- (1) Compliance with state law.
- (2) Guarding against monopoly and concentration of the retail sale of alcoholic beverages in one group.
- (3) Prevention and control of the sale of alcoholic beverages by unfit persons.
- (4) Promotion of appropriate land use planning and zoning in accordance with the county's comprehensive planning and land use policies and regulations.
- (5) Protection of schools, homes, churches, parks, and other institutions.
- (6) Protection of the public health, safety, and general welfare.

Sec. 6-2. Definitions.

As used in this chapter, the term:

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverage(s) means and includes all alcohol, beer, malt beverage or wine as defined in this section.

Applicant means any one or more persons applying for a license in the county or renewal thereof.

Application means those forms required by the county to be completed by persons applying for an original license or a renewal license under this chapter.

Beer and malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product or any combination of such products in water, containing no more than six percent alcohol by volume and including ale, porter, brown stout, lager beer, small beer and strong beer. The term does not include sake, known as Japanese rice wine. The term "beer" is used interchangeably with "malt beverage".

Board of Commissioners shall mean the Habersham County Board of Commissioners.

Brew pub means any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in O.C.G.A. § 3-5-36 for retail consumption on the premises and solely in draft form.

Building and Planning Director shall mean the Habersham County Building and Planning Director or his/her designee.

Church means any place of permanent public religious worship and shall exist if a building permit therefor has been obtained and construction of the church has commenced or substantial materials, or supplies for its construction, have been moved to the site.

County shall mean Habersham County and when used in a geographical sense means the unincorporated areas of Habersham County.

County Clerk shall mean the County Clerk of Habersham County or his/her designee.

Eating establishment means an establishment which is licensed to sell malt beverages or wines and which derives at least 40 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

Hotel means every building or structure kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed, sleeping accommodations are offered for adequate pay to travelers and guests, and having one or more public dining rooms where meals are regularly served to such guests. Motels meeting the qualifications set out herein for hotels, shall be classified as hotels for the purpose of this chapter.

Immediate family shall include the spouses, parents, children, brothers and sisters, related by blood or marriage.

License shall mean the formal approval granted or issued by the county to a licensee for the sale of alcoholic beverages within Habersham County.

Licensee means the individual licensee and in the case of a partnership, corporation, private club, or non-profit tax exempt organization, includes the partnership, corporation, private clubs, or non-profit tax exempt organization and the named licensee.

Outlet means the definite structure, whether a room, ship, store, building, restaurant, or club, in which activities permitted by this chapter are conducted.

Package means a bottle, can, keg, barrel, or other original consumer container.

Person means any individual, firm, partnership, cooperative, non-profit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private or quasi-public.

Premises shall mean not only the structure wherein an outlet for sale of alcoholic beverages is operated under a county license, but shall include all of the lot whereon said outlet is located, except where such outlet is located in a hotel or shopping center.

Retail consumption dealer means any person who sells malt beverages or wine for consumption on the premises at retail, only to consumers and not for resale.

Retailer or retail dealer means any person who sells alcoholic beverages either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale.

Sheriff means the Sheriff of Habersham County or his/her designee.

Wholesaler or wholesale dealer means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers.

Wine means any alcoholic beverage containing not more than 21 percent alcohol by volume, made from fruits, berries, or grapes, either by fermentation, or natural fermentation with brandy added. Wine includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term wine does not include cooking wine mixed with other ingredients to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this section.

Zoning shall mean the zoning classifications as approved for the unincorporated areas of Habersham County.

Sec. 6-3. License Categories; Qualifications for issuance of a license.

(a) The following classifications of licenses shall be issued pursuant to this chapter:

- (1) Malt beverages – package.
- (2) Wine - package.
- (3) Malt beverages – consumption on the premises.
- (4) Wine – consumption on the premises.

(b) Any person who desires to obtain a license for the retail sale of alcoholic beverages by the drink or by the package must meet the minimum qualifications set forth in this section. If the applicant is a partnership, each partner must meet the qualifications of an individual licensee and must make sworn statements of these qualifications as part of the application process. If the applicant is a corporation, the officer or employee of the corporation primarily responsible for the operation of the licensed premises must meet the qualifications of an individual licensee and must make sworn statements of these qualifications as a part of the application process. If the applicant is a nonprofit tax exempt civic, patriotic, or social club or corporation which is organized and operating in the county as a mutual benefit membership group, such club or corporation may be licensed without reference to the financial interest qualifications of this section if no officer, director, trustee, manager, member, or stockholder therein can, in any event, derive any financial gain from the sale of alcoholic beverages by such club or corporation. The individual being primarily responsible for the club or corporation's compliance with this section must meet the qualifications of an individual licensee and must make sworn statements of these qualifications as part of the application process. If the applicant is a private club, each member of its governing body must meet the qualifications of an individual licensee and must make sworn statements of these qualifications as part of the application process. The specific qualifications are as follows:

- (1) No license shall be issued to an applicant who is under 21 years of age.
- (2) No license for the sale of alcoholic beverages shall be issued to any person who is not a citizen of the United States or an alien lawfully admitted to this country as a permanent resident.
- (3) No license for the sale of alcoholic beverages may be issued to an applicant under the following circumstances:
 - a. An applicant who has been convicted under any federal, state or local law of a felony, particularly, but not limited to, those offenses involving alcoholic

beverages, gambling, tax law violations or violations relating to the Georgia Controlled Substances Act.

b. An applicant who has been convicted under any federal, state or local law of a misdemeanor involving alcoholic beverages, gambling, tax law violations or violations relating to the Georgia Controlled Substances Act, if such conviction indicates to the Board of Commissioners that the applicant will not maintain the outlet for which he is seeking a license in conformity with the federal, state or local laws, rules, and regulations.

c. An applicant who has been convicted under any federal, state or local law of any felony or misdemeanor involving moral turpitude.

For purposes of subsections a. through c. above, a "conviction" under this chapter shall include any plea of guilty or admission of guilt and subsequent sentence under the First Offender Act of O.C.G.A. § 42-8-60, or any similar sentencing provision for the first offenders of any other state or of the United States. A plea of nolo contendere for any felony or misdemeanor of any state or of the United States, or any county ordinance, except traffic violations, or the forfeiture of a bond (except traffic offenses) when charged with a crime is also considered a conviction under this chapter.

d. An applicant who has been held in civil or criminal contempt by any federal, state or local court if such citation indicates to the Board of Commissioners that the applicant will not maintain the outlet for which he is seeking a license in conformity with federal, state or local laws, rules, and regulations.

e. An applicant for a license to sell beer and wine for consumption on the premises who has been denied or has had revoked for cause within five years of the date of his/her application any license issued to him/her by Habersham County and/or any other municipality, county and/or state to sell alcoholic beverages or an applicant for a package beer and wine license at an outlet in Habersham County at which the license at that outlet has been revoked for cause within five years of the date of the application.

f. An applicant as determined by the Board of Commissioners, by reason of such applicant's business experience, financial standing, trade associations, personal associations, records of arrests, or reputation in any community in which he has resided, who is not likely to maintain the outlet for which he is seeking a license in conformity with federal, state, or local laws.

g. A location that is not in compliance with any federal, state or local regulation, including but not limited to, a state certificate of occupancy or state fire

marshal certificate of approval if the noncompliance has not been remedied by the applicant within a period of three months from the date of the application.

(4) The applicant, whether it be an individual, a partnership, a corporation, a nonprofit tax exempt civic, patriotic, or social club, or a private club, shall be the owner of the premises for which the license is held or the holder of the lease thereon for the period covered by the license. If the premises are leased, a copy of the lease will be furnished to the Habersham County Building and Planning Director's Office with the application.

(5) The named licensees shall be active in the operation of the outlet and personally be present on the premises sufficiently to ensure compliance with the provisions of this chapter. If the owner of the outlet is a corporation, the corporation and its principal officers shall be responsible for the actions of the named licensee and the conduct of the licensed business. If the owner of the outlet is a partnership, each partner shall be responsible for the actions of the named licensee and the conduct of the licensed business. If the owner of the outlet is a nonprofit tax exempt civic, patriotic, or social club or a private club, the entity and its principal officers and/or governing body shall be responsible for the actions of the named licensee and the conduct of the licensed business.

(6) No license to engage in the retail sale of alcoholic beverages by the drink or in the original package shall be granted or issued unless the location within such area of the county is, at the time such application is made, located within one of the zoning designations permitting such use as prescribed by the zoning ordinances of the county:

Private clubs shall be exempt from the above zoning classification requirements and need not contain such designations in order for a license to issue.

(7) No license shall be issued for the sale of alcoholic beverages for consumption on the premises to any outlet located within 100 yards of the property line of any church building or of any school building, educational building, school grounds, or college building existing at the time of application. No license for the sale of wine or malt beverages by the package shall be issued where the outlet for such sales is located within 100 yards of the property line of any church building, school building, educational building, school grounds, or college building existing at the time of the application. The above provisions do not apply to renewal of a license or to applicants seeking a new license if the location was licensed by Habersham County to sell alcoholic beverages at anytime during the 12 months immediately preceding such application. For the purpose of this chapter, the schools or colleges referred to herein, shall include only such state, county, city, church, private, or other schools that teach the subjects commonly taught in the common schools and colleges of this state and expressly exclude buildings used by school officials solely for administrative purposes in which school children are not regularly taught. For purposes of this chapter, school and educational buildings shall also include daycare centers if the daycare centers receive State or federal funding for an educational program at the time of application. Distances shall be

measured by the most direct route of travel on the ground according to O.C.G.A. § 3-3-21(c).

Unless waived by the Building and Planning Director out of recognition of the absence of any school or church buildings in proximity to the outlet, all applications for a license shall have attached thereto a current certificate from a registered surveyor of this state showing a scaled drawing of the premises, the location or premises where the applicant desires to operate an alcoholic beverage outlet, and the distance in linear feet measured by the most direct route of travel on the ground from the subject applicant's structure to the property line of the tract which is located nearest the church building, school building, educational building, school grounds or college campus building defined in this subsection.

(8) No license shall be issued to any person who fails to comply with all the rules and regulations regarding the sale of alcoholic beverages contained in this chapter.

(9) No license shall be issued to any person who owes any delinquent taxes, and/or assessments to Habersham County.

Sec. 6-4. The application process.

(a) Any person desiring to sell alcoholic beverages by the drink or by the package shall make written application to the Building and Planning Director for the appropriate license on forms required by the county and filed with the Habersham County Building and Planning Director's Office. All applications shall be fully completed by the applicant and sworn to and signed by the applicant in the presence of a notary public or other officer authorized to administer oaths. If the application is filed on behalf of a partnership, then each partner shall sign the application in the presence of a notary public or other officer authorized to administer oaths. If the application is filed on behalf of a corporation, the officer or employee of the corporation primarily responsible for the operation of the licensed premises who is also the named licensee must sign the application in the presence of a notary public or other officer authorized to administer oaths. If the application is filed on behalf of a nonprofit tax exempt civic, patriotic, or social club or corporation which is organized and operated in the county as a mutual benefit membership group, the individual being primarily responsible for the club or organization's compliance with this chapter must sign the application in the presence of a notary public or other officer authorized to administer oaths. If the application is filed on behalf of a private club, then each member of its governing body must sign the application in the presence of a notary public or other officer authorized to administer oaths.

All applications shall be accompanied by the following:

(1) Unless waived by the Building and Planning Director out of recognition of the absence of any school or church building in proximity to the outlet, the application shall have attached a current certificate from a registered surveyor of this state,

showing a scaled drawing of the premises, the location on the premises where the applicant desires to operate an alcoholic beverage outlet, and the distance in linear feet measured by the most direct route of travel, on the ground, from the proposed outlet to the property line of the tract upon which is located the nearest church building, school building, educational building, school grounds or college grounds or college campus building as defined in this chapter.

(2) If the outlet is to be located on leased premises, then a copy of the lease must be attached.

(3) If the applicant is a partnership, a copy of the partnership agreement, including amendments, shall accompany the application.

(4) If the applicant is a corporation, a copy of the articles of incorporation and by-laws, including amendments, shall accompany the application.

(5) If the applicant is a nonprofit tax exempt civic, patriotic or social club or corporation which is organized and operating in the county as a mutual benefit membership group, a copy of the charter or articles of incorporation, as well as sufficient proof of the organization's tax exempt status shall accompany the application.

(6) If the applicant is a private club, a copy of the articles of incorporation and by-laws, including amendments, shall accompany the application.

(7) As a prerequisite to the issuance of any license, the applicant shall furnish a complete set of fingerprints for all persons required to sign the application to be forwarded to the Georgia Bureau of Investigation and to the Federal Bureau of Investigation, as specified under Georgia law. Each person required to sign the application for an original license and/or renewal license, must authorize the County of Habersham or its designated representatives to secure from any state, county, municipality or federal court, any police department and/or law enforcement agency his, her or its criminal history and civil history and further authorize the county, its officers and employees to use such information in determining whether or not an alcoholic beverage license will be issued to the applicant. Further, the applicant must authorize the county, its officers and employees to use such information in a public hearing if necessary, to determine whether or not the applicant's license should be denied, voided, cancelled and/or revoked. Each applicant waives any rights he, she or it may have under state or federal law, statute and/or court ruling to preclude the county from securing such criminal and/or civil history from any source and waives and right he, she or it may have to preclude the county from using such information publicly in determining whether the license will be issued to such applicant.

(8) The application shall be accompanied by a certified check for the full amount of the license fee, together with a separate check in the amount as set from time to time by the Board of Commissioners for an investigative fee. If the application is denied, or if the applicant withdraws the application prior to its approval, the license fee (without interest) shall be refunded to the applicant. All other fees paid to the county which were submitted as part of the application, including, but not limited to, the investigative fee, the sign fee, and any employee application permit fee(s) shall be retained by the county.

(9) All applications for licenses shall contain a full and complete statement of all material facts which tend to show whether the applicant or applicants, or any member or members of their immediate families, own a financial interest in any other alcoholic beverage outlets, or any interest in a wholesale alcoholic beverage entity, and/or distillery or brewery, and what interest they and each of them will have in the alcoholic beverage outlet being requested from this county.

(10) The Building and Planning Director may require any additional information and records he reasonably deems necessary. Failure to furnish such data shall automatically serve to dismiss the application. Any misstatement or concealment of fact in the application shall be grounds for denying a license or revoking an issued license, and shall make the applicant liable to prosecution for perjury under the laws of the State of Georgia.

(11) Each applicant shall certify that applicant has read this chapter and if the license is granted, each licensee shall maintain a copy of this chapter on the premises and shall require each of the licensee's employees to be familiar with this chapter.

(12) If the application is for sale of alcoholic beverages for consumption on the premises, the applicant shall attach to such application a representative menu or bill of fare of prepared food or meals offered by the eating establishment to the public.

(b) Once an application, the accompanying documents described above, and the required investigative and license fees are filed with the Habersham County Building and Planning Director's Office, the Sheriff's office shall conduct a criminal investigation of the applicant and produce a written criminal investigation report concerning all information relating to the fingerprinting, criminal history, arrest data, prior alcohol violations, and other matters pertaining to law enforcement. In the event the failure to obtain fingerprinting information from state and federal authorities delays completion of the written report, the Sheriff's office may later supplement any fingerprinting information. If the fingerprinting information later reveals that the applicant fails to meet the requirements set by this chapter, this may be grounds for denying the application or revoking a license, despite an otherwise satisfactory written report. Upon production of the criminal investigation report, the Sheriff's office shall assemble the application forms and all accompanying documents relating to investigation and

processing of the application and deliver such documents to the Building and Planning Director for review. If the criminal investigation report shows that the applicant meets the requirements set by this chapter and the Building and Planning Director believes that the applicant may meet all other qualifications of this chapter, then the Building and Planning Director shall schedule the application for a hearing at the next regularly scheduled Board of Commissioners meeting and shall so inform the applicant of this fact before such meeting. If the criminal investigation report shows that the applicant fails to meet the requirements set by this chapter, or if the Building and Planning Director finds that the applicant fails to meet all other qualifications outlined by this chapter, then the Building and Planning Director shall inform the applicant, in writing, that the application has been denied, and shall set forth in reasonable detail the reasons for the denial and shall notify the applicant of his/her right to appeal; said appeal to be before the Board of Commissioners in accordance with section 6-12 of this chapter. If an applicant desires to appeal a denial by the Building and Planning Director, the applicant must file a written request for an appeal hearing with the Building and Planning Director within five business days of the date of the written notice informing the applicant of the denial by the Building and Planning Director.

(c) Any application which the Building and Planning Director determines to satisfy all the qualifications outlined in this chapter, including character requirements as contained in the criminal investigation report of the Sheriff, shall be scheduled for review at the next regularly scheduled meeting of the Board of Commissioners. At that meeting, the applicant and any person opposed to said application has the right to present to the Board of Commissioners any information that the Board of Commissioners determines is relevant to the licensing decision. In making its determination on whether to approve or deny the application, the Board of Commissioners shall look to the qualifications set forth in this chapter and consider the public interest and welfare. The board shall have the sole discretion to grant or deny the application based on the information presented. A decision by the Board of Commissioners shall be made within 45 days from the date of the Board of Commissioners meeting unless the decision is postponed for purposes of the board obtaining additional information deemed necessary for consideration of the application. Notice of the decision by the Board of Commissioners shall be mailed to the applicant. In the event the application is denied, such written notification shall set forth in reasonable detail the reasons for the denial and shall notify the applicant of his right to appeal; said appeal to be in accordance with section 6-12 of this chapter.

(d) At the time the applicant makes application for a license, he shall pay to the Building and Planning Director's office an amount as set from time to time by the Board of Commissioners as a non-refundable sign fee for the posting on the premises where the activities permitted by such license are to be conducted, a notice of the pending application. The sign shall be posted and furnished by the county and will be painted or printed in black letters one and one-half inches in height, against an orange background, on a two-face, back-to-back surface of not less than 14 x 30 inches in space, and shall be placed by the county with the base of the sign nor more than three feet from the ground on the most conspicuous

part of the premises, facing the most frequently traveled road, street, or highway abutting same, and not more than ten feet there from. The sign shall state clearly the nature and purpose of the application, and the name of the person, partnership, organization, corporation or private club making the application.

(e) In all instances in which an application is denied under the provisions of this chapter, the applicant may not reapply for the same type of license for at least one year from the final date of such denial.

(f) Upon the issuance of a license, the licensee must have and continually maintain in Habersham County, a registered agent upon whom any process, notice, or demand required or permitted by law or under this chapter may be served. This person must be an individual and must be a resident of Habersham County, Georgia. The licensee shall file the name of such agent, along with the written consent of such agent, with the Building and Planning Director in such form as he or she may prescribe.

(g) Upon approval by the Board of Commissioners of the application for a license, the Building and Planning Director shall issue a license in accordance with the approved application. If the applicant is an individual, the license shall be issued in the name of the individual. If the applicant is a corporation, the license shall be issued in the name of the corporation and in the name of the officer or employee of the corporation primarily responsible for the operation of the licensed premises. If the applicant is a partnership, the license shall be issued in the name of the partnership and in the name of one of the partners. If the applicant is a nonprofit tax exempt civic, patriotic, or social club or corporation which is organized and operated in the county as a mutual benefit membership group, the license shall be issued in the name of the club or corporation and in the name of the individual primarily responsible for the club or corporation's compliance with this chapter. If the applicant is a private club, the license shall be issued in the name of the private club and in the name of one of the members of the private club's governing body who shall be the named licensee. All licenses issued shall be granted for the full calendar year or for the number of months remaining in the calendar year. Any applicant granted a license before July 1, shall pay the full license fee without pro-rata. License fees for licenses granted on or after July 1, will be one-half the annual license fee. License fees are not refundable once the license is granted by the county.

(h) In the event the Board of Commissioners denies the application for a license, the applicant may appeal to the Board of Commissioners for reconsideration of the denial by filing a written request for an appeal hearing with the Building and Planning Director within five business days of the date of the written notice informing the applicant of the denial. Any such appeal hearing concerning a denial shall be conducted according to the procedures set forth in section 6-12.

Sec. 6-5. Renewal of license.

(a) All licenses granted under this chapter shall expire on December 31 of each year. Licensees who desire to renew their license shall file a renewal application accompanied by the requisite license fee and investigative fee as set from time to time by the Board of Commissioners with the Building and Planning Director's office upon forms prescribed by the county on or before October 1 of each year without penalty. Persons holding a license for more than any one establishment and desiring to renew the license for such establishments shall pay only one investigative fee charge. Applications for renewal filed after October 1 shall be subject to a late charge of ten percent of the license fee.

(b) Each application for renewal will show the date of the original application and state there have been no changes in any of the information and data contained in and/or furnished with the original application and that the applicant or applicants for the renewal are familiar with applicable Georgia laws and regulations and with the rules and ordinances of the county. The renewal application must be signed and sworn to by all applicants in the presence of a notary public or other officer authorized to administer oaths. In the event it is discovered by the county that changes have occurred, which are in any way different from those facts shown in the original application and the documents furnished with the original application, the renewal shall be void. The applicant may be required to file a new application if changes have occurred in the information and data furnished with the original application. The applicant will furnish all information required by the renewal application and failure to furnish the information will be grounds for denying the application. A false statement made on the renewal application will void the application and shall make the applicant liable to prosecution for perjury under the laws of the State of Georgia.

(c) Each application for renewal of a license shall be approved or denied in accordance with the procedures prescribed in section 6-4 of this chapter, except that the public hearing for all applications of renewal will be conducted before the Board of Commissioners at the regularly held December meeting of the calendar year.

Sec. 6-6. Transfer of license.

(a) No license for the sale of alcoholic beverages shall be transferable, except upon the death of a licensee, at which time such license may be transferred to the administrator, executor, or lawful adult heir or heirs of such deceased person. If the legal representatives of such deceased licensee cannot meet all the requirements of this chapter when the time arrives to renew the license, it shall not be renewed.

(b) Whenever a licensee doing business as a sole proprietorship loses its license as a result of the provision of this chapter, the licensee's successor in interest, upon filing an application for a new license, may continue to operate under the terms of the prior license until such time as the new application is approved or denied by the Board of Commissioners; provided, however, no such continued operation shall be authorized until such time as a new

application for license is made and the required fees paid to the Building and Planning Director's office. Payment of fees shall not be required of a corporation whose predecessor in interest remains the named licensee under the new lease.

Sec. 6-7. Restrictions and prohibitions.

(a) It shall be unlawful for any person to manufacture, distribute, sell, or possess for the purpose of sale, any alcoholic beverage when such person does not have a license from the county to sell or possess or manufacture for sale such beverage, provided that this subsection shall not be interpreted to preclude the otherwise illegal practice of private production of beer as permitted under O.C.G.A. § 3-5-4 or the private production of wine as permitted under O.C.G.A. § 3-6-3 for private use and consumption or to require the procuring of a license for a private party conducted at a private home, business, or other private establishment for which alcoholic beverages are provided at no charge.

(b) Except as otherwise authorized by law, no licensee, or employee of the licensee, shall sell or permit to be sold alcoholic beverages to any person under the legal drinking age as prescribed by Georgia law under O.C.G.A. § 3-3-23.

(c) No licensee, or employee of the licensee, shall permit on the licensed premises the sale, barter, exchange, giving, providing or furnishing of alcoholic beverages to any person who is in a state of noticeable intoxication as prescribed by Georgia law under O.C.G.A. § 3-3-22.

(d) No licensee, or employee of the licensee, shall permit the sale of alcoholic beverages on Sunday unless otherwise permitted by this chapter. The sale of alcoholic beverages is permitted on election days in outlets not located within 250 feet of a polling place.

(e) No licensee, or employee of the licensee, authorized to sell alcoholic beverages by the package shall sell or permit to be sold any single beer, wine cooler, or similar alcoholic beverage that is customarily packaged for sale as part of a four-pack, six-pack, twelve-pack, or similar package as prescribed by Georgia law under O.C.G.A. §3-3-26.

(f) Reserved.

(g) In any case where a reasonable and prudent person could reasonably be in doubt as to whether or not the person to whom an alcoholic beverage is to be sold or otherwise furnished is actually 21 years of age or older, it shall be the duty of the licensee, or employee of the licensee, to see and to be furnished with proper identification in order to verify the age of such person. Identification in this section shall mean any document issued by a governmental agency containing a description of the person or the person's photograph, and giving such person's date of birth, and including, but without being limited to a passport, military identification card, driver's license, or state department public safety identification card as prescribed by Georgia law under O.C.G.A. § 3-3-23. Proper identification shall not

include a birth certificate.

(h) No licensee, or employee of the licensee, authorized to sell alcoholic beverages by the package shall permit the consumption of alcoholic beverages on the premises as prescribed by Georgia law under O.C.G.A. § 3-3-26.

(i) No licensee, or employee of the licensee, authorized to sell alcoholic beverages by the drink shall permit any person to remove from the licensed premises any alcoholic beverage sold or dispensed for consumption on the premises. This specifically prohibits the use of "to go" cups or any device permitting any person to remove the alcoholic beverages from the licensed premises,

(j) No person employed or working in any capacity at any licensed outlet shall solicit or encourage patrons to purchase drinks to be consumed by or otherwise disposed of by any such person so employed or working as prescribed by Georgia law under O.C.G.A. § 3-3-42.

(k) No licensee, or employee of the licensee, shall add to the contents of a bottle or refill an empty bottle or in any other manner misrepresent the quantity, quality, or brand name of any alcoholic beverage. No retail licensee shall purchase alcoholic beverages from any person, firm or corporation other than a wholesaler licensed under this chapter. No wholesaler shall sell any alcoholic beverage to anyone other than a retailer licensed under this chapter.

(l) It shall be unlawful for any delivery to be made to and/or sales be made outside of the outlet. It shall be unlawful to sell or dispense alcoholic beverages from "drive-in" or service windows. The consumption and/or sale of alcoholic beverages shall be allowed in open areas and patios, provided that the licensee is in compliance with all other appropriate regulations as to the safe and orderly operation of such outlet, including, but not limited to, regulations pertaining to maximum capacity, ingress and egress.

(m) Reserved.

(n) The licensee shall keep the premises clean, and in proper sanitary condition, and in full compliance with provisions and regulations governing the conditions of premises used for the storage and sale of food for human consumption.

(o) No licensee shall permit on the premises any gambling, betting, games of chance, punch boards, vending machines, slot machines, pin ball machines, video machines, or similar machines which are in violation of the gambling provisions of the State of Georgia; provided, however, that this subsection shall not prohibit the lawful playing of bingo by establishments licensed to operate a bingo game under O.C.G.A. §§ 16-12-50 – 16-12-62.

(p) When a change occurs in the relationship of a person, or in the status of any property or license, or any change in payment of rents, ownership of the lease, or buildings or land on

which the outlet is located, any change in corporate ownership or management, any loss or damage to goods which result in a claim against an insurance policy and any change in the division of profits, any change in any division of net or gross sales for any purpose whatsoever, and any change in facts stated or claimed in any application or report herein required, a sworn statement of such change in all material facts relating hereto shall be filed with the Sheriff's office and then forwarded to the Building and Planning Director and failure to do so within 14 days after such change shall, unless such time limit is extended for good cause, be reason for cancellation of a license granted pursuant to the provisions of this chapter. In the event that a licensee seeks to change the named licensee of an establishment, the application shall be amended by attaching a new personal statement along with an investigative fee of as set from time to time by the Board of Commissioners. The new named licensee shall satisfy the qualification requirements as set forth in this chapter and be subject to the approval of the Board of Commissioners.

(q) Any violation of the provisions contained under this section may result in the suspension or revocation of the license held by the licensee and criminal penalties for the licensee or employee as provided for in Title III of the O.C.G.A.

Sec. 6-8. Regulations as to employees.

(a) Every licensee under this article shall maintain at all times on the premises for which the license has been issued, a list of all persons currently employed by such licensee at such premises, which list shall show the current full legal name, alias, date of birth, current address, current home telephone number, and social security number of each employee.

(b) The licensee is responsible for the conduct or actions of his/her employees in his/her employment. An act or omission of a licensee, owner, or employee of the licensee or licensed establishment that is willingly or knowingly performed, and that constitutes a violation of federal or state law or of any provision of this chapter, shall subject the licensee to suspension or revocation of its license in accordance with the provisions of this chapter. Criminal penalties may also apply to the licensee or owner when it is determined that the act or omission did occur, and the acts or omissions of the employee were known to or under reasonable circumstances should have been known to the licensee or owner, were condoned by the licensee or owner, or where the licensee or owner has not established practices or procedures to prevent the violation from occurring as prescribed by Title III of the O.C.G.A. It shall be the duty of the licensee hereunder to maintain a copy of this chapter at the outlet and to instruct each and every employee engaged in the sale and/or handling of alcoholic beverages of the terms hereof.

Sec. 6-9. Regulations on premises.

(a) A licensee authorized to sell alcoholic beverages for consumption on the premises shall display inside the place of business their current prices.

(b) The exterior of each building where alcoholic beverages are sold for consumption on the premises shall contain sufficient lighting so that all sides of the building and entrances thereto are clearly visible at all times when the premises are opened for business.

(c) The licensee shall post in a prominent location on the licensed premises, in a manner whereby it may be easily viewed by patrons, an approved sign setting forth or summarizing the laws of Habersham County and the State of Georgia in regard to the sale of alcoholic beverages to underage, intoxicated, or pregnant persons. Each sign shall be of a size and configuration approved by the Department of Revenue of the State of Georgia and said sign shall be made available to said licensee by the Building and Planning Director at a price to be established by the county.

Sec. 6-10. Suspension or revocation of license.

Any suspension, revocation, or forfeiture of a license by the Board of Commissioners shall occur only after notice and opportunity for a hearing before the Board of Commissioners consistent with the procedures set forth in section 6-12, and upon the following occurrences:

(1) Any licensed outlet that is found to be in violation of this chapter shall be subject to license revocation or suspension and shall also be subject to criminal citation and prosecution as outlined in section 6-11.

(2) Every license issued by the county for the sale of alcoholic beverages shall be immediately revoked in case of bankruptcy, receivership, levy of legal process, or failure to promptly account for and pay the excise tax levied on the sale of alcoholic beverages.

(3) Except as provided for transfers under section 6-6 above, any change in ownership of any entity owning a licensed outlet shall cause the Board of Commissioners to immediately revoke any license issued under this chapter.

(4) All licensees must, within six months after the approval of said license, open for business the outlet referred to in the application for license, and begin the sale of the product or products authorized by the said license. Failure to open the outlet and begin the sales referred to within the six-month period shall cause the Board of Commissioners to immediately revoke the license and no refund of any fees paid pursuant to this chapter shall be made.

(5) Any licensee who shall for a period or three consecutive months cease to operate the business and sale of the product or products authorized in the said license, shall, after said three months period, cause the Board of Commissioners to immediately revoke the license, and no refund of any fees paid pursuant to this chapter shall be

made.

(6) A license may be immediately suspended or revoked by the Board of Commissioners upon learning that a licensee furnished fraudulent or untruthful information in the application for a license, or omits information required in the application for a license, or fails to pay all fees, taxes, or other charges imposed under the provisions of this chapter.

(7) Whenever the state shall revoke any permit or license to sell alcoholic beverages, the county license shall thereupon be immediately revoked.

(8) Reserved.

(9) The Board of Commissioners shall immediately suspend or revoke the license of any outlet which does not meet the licensing qualifications set forth in this chapter at any time such knowledge becomes known to the board.

(10) The Board of Commissioners shall immediately revoke the license for any premises where alcoholic beverages have been sold or distributed during a period of suspension.

(11) It shall be a violation of this chapter for any licensee or any employee or agent of the licensee or licensed establishment to permit any person to engage in any activity on the premises for which the license is issued or within the place of business, which is in violation of the laws or regulations of any federal, state or county governing authority or regulatory agency. A violation of this subsection shall subject the license to immediate suspension or revocation.

(12) An act or omission of a licensee which constitutes a violation of federal or state law or regulation, relating to the sale of alcoholic beverages, taxes, gambling, violation of the Georgia Controlled Substances Act, or constitutes a crime of moral turpitude, shall subject the license to immediate suspension or revocation.

(13) Any license shall automatically expire on December 31 of each year unless renewed by the Board of Commissioners.

Sec. 6-11. Enforcement of this chapter.

(a) Any violation of this chapter shall subject the licensee to the following progressive actions by the Board of Commissioners, except for those violations and occurrences set forth in section 6-10 above that provides for immediate suspension or revocation upon notice and hearing:

- (1) The first violation shall result in a warning or a license suspension for a period of up to 30 days.
- (2) The second violation within a consecutive 24-month period shall result in license suspension for a period of not less than 30 days nor more than 90 days.
- (3) The third violation within a consecutive 24-month period shall result in license suspension for a period of not less than 90 days nor more than six months.

Nothing contained in this subsection shall be construed to preclude the Board of Commissioners from suspending a license for a period exceeding 30 days or 90 days, respectively, or from revoking the license if the board determines in its discretion that such action is necessary and in the best interest of the public health, safety, and welfare of the county.

In the case of a violation under this subsection by an employee, the suspension period may be mitigated by the Board of Commissioners upon presentation of evidence that the licensee established practices and procedures to prevent the violation from occurring.

(b) In addition to the available actions to be taken by the Board of Commissioners, individuals who violate this chapter shall be subject to criminal citation and prosecution by the Habersham County Code Enforcement Officer or Habersham County Sheriff's Department. The criminal penalties may result in a fine not to exceed \$1,000.00, imprisonment not to exceed 60 days, or both.

(c) Sworn officers of the Sheriff's Department and the Building and Planning Director shall have the authority to inspect the outlet and premises licensed under this chapter during the hours when the outlet is open for business. These inspections shall be made for the purpose of verifying compliance with the requirements of this chapter and state law. This section is not intended to limit the authority of any other county, state or federal officer to conduct inspections authorized by other provisions of law.

(d) In order to insure that the licensed premises are kept clean, and are in full compliance with all other ordinances and regulations of Habersham County and the State of Georgia, the additional following representatives are authorized to inspect regularly the licensed premises:

(1) Representatives of the Habersham County Health Department shall have the authority to inspect regularly the licensed outlet and premises to determine if the licensed outlet is in compliance with all Habersham County and State of Georgia health rules and regulations and report any violations to the Building and Planning Director.

(2) The Habersham County Fire Department shall have the authority to inspect regularly the licensed outlet and premises to determine if the licensed outlet is in

compliance with all Habersham County and State of Georgia fire regulations and report any violations to the Building and Planning Director.

(3) The county has the right to have an inspector inspect regularly the licensed outlet and premises to determine if the licensed outlet is in compliance with all technical codes of the county and report any violations to the Building and Planning Director.

(e) Every licensee shall keep and preserve records of all alcoholic beverages purchased and sold by the licensee. The records shall be kept for a period of three years from the date of purchase and sale and should at all times be open to audit and/or inspection by the Building and Planning Director or any designated employee or any outside agent or agents for the county upon approval of such outside agent or agents by the Building and Planning Department. In the event an audit is called for by the Building and Planning Director, the Building and Planning Director shall notify the licensee of the date, time and place of the audit.

Sec. 6-12. Hearing on denial, suspension, or revocation.

(a) Upon receipt of a timely appeal of a denial of a license, upon presentation of evidence to the Building and Planning Director of a violation of this chapter, or upon a showing to the Building and Planning Director of any of the other occurrences set forth in section 6-10 as grounds for suspension or revocation, the Building and Planning Director shall schedule a hearing before the Board of Commissioners or their appointee and provide written notice to the adverse party of the time, place and date of the scheduled hearing. The Building and Planning Director shall also state in the written notice in reasonable detail basis for the denial or the violation or occurrence alleged that forms the basis for the denial or potential suspension or revocation. After notice of hearing, matters scheduled for hearing may only be continued by agreement of the Building and Planning Director and the adverse party and/or counsel for the adverse party.

(b) The Board of Commissioners or their appointee shall have the duty of conducting hearings concerning the denial, revocation, or suspension of a license. The standard of proof on all issues in the hearing shall be a preponderance of the evidence and a determination will be made on the basis of the competent evidence presented at the hearing. At its discretion, the Board of Commissioners may appoint a special master to conduct said hearing and make findings of fact and conclusions of law and report such findings and conclusions to the Board of Commissioners and to the Building and Planning Director.

(c) At the hearing, after presentation of the case against the adverse party, the adverse party will have an opportunity to present his/her case, to rebut the allegations made against him/her, and present whatever defense he/she has. The adverse party shall have the right to

be represented by an attorney, at the expense of the adverse party, and to present evidence and cross-examine opposing witnesses.

(d) At the conclusion of the hearing, the findings and conclusions of the Board of Commissioners shall be forwarded to the Building and Planning Director and it shall be the duty of the Building and Planning Director to provide written notification to the adverse party of the actions of the Board of Commissioners, which actions shall comport with section 6-11 of this chapter.

(e) The decision of the Board of Commissioners shall be final unless appealed to the Superior Court of Habersham County, Georgia, within 30 days of the Building and Planning Director providing written notification to the adverse party of the board's decision.

(f) For purposes of this chapter, notice shall be deemed delivered when personally served or when served by certified mail postage prepaid within three days after the date of deposit in the United States Mail.

Sec. 6-13 – 6-50. Reserved.

ARTICLE II. MALT BEVERAGE AND WINE—ORIGINAL PACKAGE

Sec. 6-51. License fees.

The license fee for a license to sell malt beverages and wine by the package shall be paid to the Building and Planning Director in the amount as set forth from time to time by the Board of Commissioners by certified or cashier's check at the time of the filing of the original application and the amount as set forth from time to time by the Board of Commissioners upon renewal thereof.

Sec. 6-52. Excise tax on the sale of beer and malt beverages.

The county, in addition to excise taxes levied by the state, does hereby levy a local tax on the sale of beer and malt beverages of \$0.05 per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces sold by wholesalers to retail package outlets in the county. Further, there is also levied by the county an excise tax on tap or draft beer of \$6.00 per each container sold by wholesalers to retail package outlets in the County of Habersham and containing more than 15 gallons and a like rate for fractional parts where the draft beer is sold in or from barrel or bulk containers. Said tax is imposed upon wholesalers and is payable on a monthly basis as set out under section 6-223.

Sec. 6-53. Excise tax on the sale of wine.

There is hereby levied an excise tax of \$0.22 per liter on wines sold by a wholesaler to retail outlets in the county and a proportionate tax on the same rate on all fractional parts of a liter. Said tax is imposed upon wholesalers and is payable on a monthly basis as set out under section 6-223.

Sec. 6-54. Type of retail outlet.

Beer and wine may be sold at retail, by the package, only in outlets maintaining 75 percent of the floor space and storage area in a manner which is devoted principally to the retail sale of other foods, groceries, and general merchandise.

Sec. 6-55. Hours of sale.

Retail package outlets shall engage in the sale of beer and/or wine only between the hours of 8:00 a.m. and 11:45 p.m. Monday through Saturday. No package beer and/or wine may be sold on Sunday or Christmas Day or Thanksgiving Day. The sale of beer and wine is allowed on election days provided the outlet is not located within 250 feet of a polling place.

Sec. 6-56. No consumption on premises.

It shall be unlawful for any person to consume any alcoholic beverage on the premises licensed for the sale of malt beverages or wine by the package and it shall be unlawful for any licensee by the package to open for, or break the package for, a purchaser and/or permit the consumption of alcoholic beverages on said premises.

Sec. 6-57. Listing of prices.

Licenses shall indicate plainly by tag or labels on the bottles or containers, or on the shelf immediately below where the containers are placed, the prices of all beer and wine offered for sale.

Secs. 6-58 – 6-130. Reserved.

ARTICLE III. ON PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES

Sec. 6-131. Locations where prohibited.

(a) No alcoholic beverages may be sold by the drink for consumption on the premises, except in eating establishments regularly serving prepared food, with a full service kitchen (a full service kitchen will consist of a four-compartment pot sink, a stove or grill permanently installed and a refrigerator, all of which must be approved by the health and fire departments) prepared to serve food every hour they are open, pursuant to the applicable building, fire and safety codes in effect for the

county. Outlets shall derive a minimum of 40 percent of their total annual gross food and beverage sales from the sale of prepared meals or food. An audit may be required at any time to insure compliance with these provisions. If such outlet provides a bar or counter service for the sale of alcoholic beverages for on premises consumption, the seating for such bar shall not exceed ten percent of the total seating capacity of the outlet.

(b) During the initial annual period in which a license is granted, by the 20th day of each month after such license is granted, the licensee shall submit to the county a statement from a certified public accountant that the income requirements set forth in subsection (a) have been met. Thereafter each consumption on the premises license holder shall submit annually at the time of the license renewal to the county the statement from a certified public accountant that the requirements of section have been met.

Sec. 6-132. License fees.

The licensee shall pay by certified or cashier's check a license fee for the sale of beer for consumption on the premises to Habersham County in the amount as set forth from time to time by the Board of Commissioners to be paid at the time of application for said license and the amount as set forth from time to time by the Board of Commissioners for each annual renewal thereof. The licensee shall pay by certified or cashier's check a license fee for the sale of wine for consumption on the premises to Habersham County in the amount as set forth from time to time by the Board of Commissioners to be paid at the time of application for said license and the amount as set forth from time to time by the Board of Commissioners for the renewal thereof.

Sec. 6-133. Excise tax.

The county hereby imposes an excise tax upon every purchase of beer or wine served for consumption on the premises of three percent of the purchase price of said beverage. Said tax shall be paid by the licensee to the county, and remitted monthly by said licensee. The imposition of this tax shall be administered pursuant to the following rules and regulations:

(1) Every licensee or his agent is hereby authorized and directed to collect the tax imposed herein from purchasers of alcoholic beverages by the drink within the licensed premises. Such licenses or agent shall furnish such information as may be required by the Building and Planning Director to facilitate the collection of the tax.

(2) If requested by the purchaser, every licensee for the sale of alcoholic beverages by the drink shall at the time of collection for food and drinks served give to the purchaser a receipt on which the purchase price and tax imposed by this article on alcoholic beverages by the drink shall be itemized separately. In all cases where the collection of food and drinks is to be deferred payment or credit, the licensee is liable at the time of, and to the extent that such credits are incurred in accordance with the rate of tax owing on the amount thereof. The Building and Planning Director and the Board of Commissioners shall have the authority to adopt rules and regulations prescribing

methods and schedules for the collection and payment of the tax.

(3) The taxes imposed by this section shall become due and payable from the purchaser at the time of purchase of any alcoholic beverage by the drink in this county. The full amount of such taxes collected by the licensee shall be due and payable to the county monthly, on or before the 20th day of the month following each monthly period. On or before the 20th day of the month following each monthly period a return for the preceding monthly period shall be filed with the finance department in such form as the Building and Planning Director may prescribe by every licensee liable for the payment of tax hereunder; all returns shall show the gross receipt from the sale of alcoholic beverages by the drink and the amount of the tax collected on such drinks.

(4) If the Building and Planning Director has cause to believe that the return, or the amount of the tax required to be paid to the county by any licensee is not proper, he may compute and determine the amount required to be paid upon the basis of any information that is available to him. Should the county determine that a deficiency exists in the amount of the tax due by the licensee for one or more monthly periods, the amount of the deficiency shall be interest at the rate of one and one-half percent per month, or fraction thereof from the due date of taxes. The Building and Planning Director or his designated representative shall give to the licensee written notice of this deficiency determination, and notice may be served by the county marshal or by mail; if by mail such service shall be addressed to the registered agent of the licensee. Service by mail is complete when delivered by certified mail with a receipt signed by the addressee or by receipt of mailing. Except in the case of failure to make a return, every notice of a deficiency determination shall be mailed within three years after the 20th day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period should last expire.

(5) If any licensee fails to make a return, the Building and Planning Director shall make an estimate of the amounts of the gross receipts of the licensee, or as the case may be, the amount of the total sales within the county which are subject to the tax. The estimate shall be made for the period or periods in respect to which the person failed to make the return, and shall be based upon any information which is available to the Building and Planning Director. Written notice shall be given in the manner prescribed in the preceding paragraph. The amount of the determination shall bear interest at the rate of one and one-half percent per month, or fraction thereof, from the 20th day of the month following the monthly period for which the amount or any portion thereof would have been returned until the date of payment.

(6) Any licensee who fails to pay the tax herein imposed, or fails to pay any amount of tax required to be collected and paid to the county within the time required, shall pay a penalty or 20 percent of the tax or amount of the tax or amount of the tax in addition to the tax or amount of the tax plus interest on the unpaid tax or any portion thereof as set forth in the preceding section.

(7) At any time within three years after any tax, or any tax required to be collected becomes due and payable, and at any time within three years after the delinquency of any tax, or any

amount of tax required to be collected, the county may bring an action in the courts of this state, of any other state, or of the United States to collect the amount delinquent, together with penalties and interest, court fees, filing fees, attorney's fees, and other legal fees incident thereto. Whenever the amount of any tax, penalty, or interest has been paid more than once, which fact has not been determined by the Building and Planning Director, the excess amount paid the county may be credited on any amounts then due and payable from the licensee, or may be refunded to the licensee if the licensee is no longer operating a licensed premises in the county.

(8) The Building and Planning Director and the Sheriff's Department shall administer and enforce the provisions of this section for the collection of the tax imposed by this section. Every licensee for the sale of alcoholic beverages by the drink in the county shall keep such records, receipts, invoices, and other pertinent papers in such forms as the Building and Planning Director may require. The Building and Planning Director or any person authorized in writing by the Board of Commissioners may examine the books, papers, records, financial reports, equipment, and other facilities of any licensee liable for the tax in order to verify the accuracy of any return made, or if no return is made by the licensee, to ascertain and determine the amount required to be paid. In the administration of the provision of this section, the Building and Planning Director may require the filing of the reports by any person or class or persons having in such person's possession or custody information relating to the purchases which are subject to the tax. The report shall be filed with the Building and Planning Director and shall set forth the purchase price for each purchase, the date or dates of purchase, and such other information as the Building and Planning Director may require. The licensee shall keep a copy of this chapter at the outlet at all times. All employees of the licensee will be informed of the contents of this section.

(9) Any person violating any of the provisions of this section shall be deemed guilty of an offense and upon conviction thereof shall be punished by a fine and/or imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this section is committed, continued, or permitted by such person and shall be punished accordingly. Any licensee or any other person who fails to furnish any return required to be made, or fails or refuses to furnish a supplemental return or other data required by the Building and Planning Director, or who renders a false or fraudulent return shall be deemed guilty of an offense and upon conviction thereof, shall be punished as aforesaid.

Sec. 6-134. Hours of sale.

Alcoholic beverages shall not be sold for consumption on the premises, except between the hours of 11:00 a.m. and 2:00 a.m. on Monday through Friday, and between the hours of 11:00 a.m. and midnight on Saturday. All patrons must have exited the licensee's establishment within 30 minutes of the time which alcoholic beverages may no longer be sold, thus setting such exit time at 2:30 a.m. on Monday through Friday, and 12:30 a.m. on Saturday. Alcoholic beverages may be sold for consumption on the premises on election days provided the outlet for such sale is not located within 250 feet of a polling place.

Sec. 6-135. Consumption sales only.

Licensees of alcoholic beverages for consumption on the premises shall not be permitted to sell alcoholic beverages by the package at that outlet and shall not permit a purchaser to remove from the premises any alcoholic beverage. This specifically prohibits the use of "to go" cups or any other device permitting any person to remove alcoholic beverages from the licensed premises.

Sec. 6-136. Licensee's price list.

Licensees of alcoholic beverages for consumption on the premises shall display in prominent places, inside the outlet and/or on menus their current prices of wine or malt beverage by the drink. Provided, however, all licenses will keep a record of all sales of alcoholic beverages sold on which the excise tax is required to be paid under this chapter. No display of prices or brand names of alcoholic beverages to be served shall be displayed in such a manner as to be visible from the outside of the licensed outlet.

Sec. 6-137. Patios and open areas.

The consumption of alcoholic beverages shall be allowed in open areas and patios, provided that the licensee is in compliance with all other appropriate regulations, as to the safe and orderly operation of such establishment, including, but not limited to regulations pertaining to maximum capacity, ingress, and egress.

Sec. 6-138. Happy hour promotions prohibited.

No licensee shall advertise a happy hour. No licensee may serve discounted drinks, or increase the volume of alcoholic beverage contained in a drink without proportionately increasing the price customarily charged for such beverage. As used in this code section, the phrase "customarily charged" means the price regularly charged for such alcoholic beverage in the same calendar week.

Sec. 6-139. Lighting.

The exterior of each building where alcoholic beverages are sold for consumption on the premises shall contain sufficient lighting so that all sides of the building and all entrances thereto are clearly visible at all times when the outlet is opened for business. Also, the lounge and restaurant areas, including all tables, booths, and other areas where customers are served, and all passageways shall be sufficiently well illuminated so that customers may be viewed by others inside the outlet.

Sec. 6-140. Bring your own bottle "brown bagging" prohibited.

No person may bring alcoholic beverages (brown bag) into any establishment, whether that establishment is licensed or is not licensed to serve alcoholic beverages, for the purpose of consuming alcohol on the premises during regular business hours of the establishment and/or while

the establishment is open to the public.

Sec. 6-141. Organizations exempt from food service requirement.

Nationally recognized and chartered organizations such as veterans organizations, fraternal organizations, and other nonprofit organizations currently having tax exempt status under either the United States Internal Revenue Code or the Georgia Income Tax Law shall not be required to operate a food establishment serving prepared food in order to sell alcoholic beverages shall be subject to all county ordinance regulations and general licensing application requirements for licensees, provided, however, any applicants for temporary licenses may be exempted from certain ordinance regulations and application requirements if the Building and Planning Director, after consultation with the Sheriff, determines that such exemption will not violate the purposes of this chapter as set forth in subsection 6-1(d) herein. Any applicant requesting a temporary license must qualify for said license by submitting an application on a form provided by the Building and Planning Director to the Sheriff's office and by tendering a certified or cashier's check to the Sheriff's office in the amount as set forth from time to time by the Board of Commissioners per each day alcoholic beverages are sold. Said temporary license will be granted to the same applicant a maximum of five days per year.

Sec. 6-142. Reserved.

Sec. 6-143. Nude dancing; findings; public purpose.

(a) Based on the experience of other counties and municipalities, including, but not limited to, Atlanta and Fulton County, Georgia; DeKalb County, Georgia; and Fort Lauderdale and Palm Beach, Florida, which experiences we believe are relevant to the problems faced by Habersham County, Georgia, we take note of the notorious and self-evident conditions attendant to the commercial exploitation of human sexuality, which do not vary greatly among generally comparable communities within our country. Moreover, it is the finding of the Board of Commissioners that public nudity (either partial or total) under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages in so-called "nude bars" or establishments offering so-called "nude entertainment" or "adult entertainment," begets criminal behavior and tends to create undesirable community conditions. Among the acts of criminal behavior identified with nudity and alcohol are disorderly conduct, prostitution, and drug trafficking and use. Among the undesirable community conditions identified with nudity and alcohol are depression of property values in the surrounding neighborhood, increased expenditure for and allocation of law enforcement personnel to preserve law and order, increased burden on the judicial system as a consequence of the criminal behavior hereinabove described, and acceleration of community blight by the concentration of such establishments licensed to sell alcohol for consumption on the premises is in the public welfare and it is a matter of governmental interest and concern to prevent the occurrence of criminal behavior and undesirable community conditions normally associated with establishments which serve alcohol and also allow and/or encourage nudity. To that end, this section is hereby adopted.

(b) The following types of entertainment, attire and conduct are prohibited upon any premises licensed to sell, serve or dispense alcohol beverages for consumption on such premises within the unincorporated area of Habersham County:

- (1) The employment or use of any person, in any capacity, in the sale or service of alcohol beverages while such person is unclothed or in such attire, costume or clothing, as to expose to view any portion of the female breast below the top of the areola or of any portion of the male or female pubic hair, anus, cleft of the buttocks, vulva and genitals.
- (2) Live entertainment where any person appears in the manner described in subsection (b)(1) above or where such persons (or person) perform(s) acts of or acts which simulate any of the following:
 - a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual act which is prohibited by law.
 - b. The caressing or fondling of the breasts, buttocks, anus or genitals.
 - c. The displaying of the male or female pubic hair, anus, vulva or genitals.
- (3) The holding, promotion, sponsoring or allowance of any contest, promotion, special night, event or any other activity where patrons of the licensed establishment are encouraged or allowed to engage in any of the conduct described in subsections (1) and (2) above; provided, however, that nothing shall apply to the premises of any mainstream performance house, museum or theater.

Secs. 6-144--6-180. Reserved.

ARTICLE IV. PRIVATE CLUBS

Sec. 6-181. Definitions.

(a) "Private club" as used in this section means any nonprofit association organized under the laws of this state which:

- (1) Has been in existence at least one year prior to the filing of its application for a license to be issued pursuant to this chapter;
- (2) Has at least 75 regular dues-paying members;

(3) Owns, hires, or leases a building or space within a building for the reasonable use of its members and guests with:

- a. Suitable kitchen and dining room space and equipment; and
- b. A sufficient number of staff employees for cooking, preparing, and serving meals for its members and guests; and
- c. Has no member, officer, agent or employee directly or indirectly receiving in the form of salary of other compensation, any profits from the sale of alcoholic beverages beyond a fixed salary.

(b) "A fixed salary" means the amount of compensation paid any member, officer, agent, or employee of a private club as may be fixed for him by its members at a prior annual meeting or by the governing body out of the general revenue of the club and shall not include a commission or any profits from the sale of alcoholic beverages. Tips or gratuities, which are added to the bills under club regulations, shall not be considered as profits from the sale of alcoholic beverages.

Sec. 6-182. License fees.

A license fee authorizing a private club to sell and dispense alcoholic beverages shall be paid by certified or cashier's check to the county by the licensee in the amount as set forth from time to time by the Board of Commissioners payable at the time of the application for the license or renewal thereof.

Sec. 6-183. Reserved.

Sec. 6-184. Regulation.

Private clubs may sell and dispense alcoholic beverages upon compliance with all applicable ordinances and regulations of the county governing the sale of such beverages and upon payment of such license fees and taxes as may be required by the existing ordinances, rules and regulations. The county, however, will grant no alcoholic beverage license to a private club organized or operated primarily for the selling or serving of alcoholic beverages.

Secs. 6-185—6-220. Reserved.

ARTICLE V. WHOLESALERS

Sec. 6-221. License required.

Any wholesale dealer in alcoholic beverages licensed by the State of Georgia or the agent of

such wholesale dealer, shall be granted a license to distribute such beverages to licensed retailers or dealers in the county upon application for such license to the Building and Planning Director and the presentation of satisfactory evidence that he understands the alcoholic beverage rules and regulations of this county and the conditions under which retail licenses are issued.

Sec. 6-222. License fees.

A wholesaler of alcoholic beverages sold in the county whose principal place of business is in the county shall pay to the Building and Planning Director annual license fees as set forth from time to time by the Board of Commissioners for Beer and/or Wine.

A wholesaler dealer who is licensed to do business in more than one municipality or county of the State of Georgia and whose principal place of business is not in Habersham County shall pay to the Building and Planning Director a license fee in the amount as set forth from time to time by the Board of Commissioners. Said license fees are payable at the time of application for a license or renewal thereof.

Sec. 6-223. Excise taxes.

All wholesale dealers engaged in the wholesale distributions of alcoholic beverages to retail package outlets in this county shall pay to the Building and Planning Director an excise tax of \$0.22 per liter of wine sold to retail package licensees and a proportionate tax at the same rate on all fractional parts of a liter. Further, all wholesale dealers will pay to the county an excise tax for malted beverages sold to retail package outlets in this county, equal to \$0.05 per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces. Further, the wholesale dealers will pay to the county an excise tax on tap or draft beer in the sum of \$6.00 for each container sold containing not more than 15 ½ gallons and a like rate for fractional parts where the draught beer is sold in or from a barrel or bulk container. Each licensee responsible for the payment of the excise tax shall file a report and payment within the time required shall result in a payment penalty of ten percent of the excise tax amount due or \$200.00 whichever is greater. Payment of this excise tax shall be made before the tenth day of each month for all sales made during the previous month.

Sec. 6-224. Hours of sale.

The business hours of wholesale dealers shall be from sunup to sundown only on days the outlets for sale of alcoholic beverages in the original package and by the drink are authorized to sell alcoholic beverages, excluding Sundays.

Sec. 6-225. Special provisions applicable to wholesale license.

(a) No retailer shall purchase any alcoholic beverage from any person other than a wholesaler licensed under this chapter. No wholesaler shall sell any alcoholic beverages to any person other

than a retailer licensed under this chapter. No alcoholic beverages shall be delivered to any outlet in the county except by a duly licensed wholesaler. The name of the wholesale distributor shall be clearly marked on the delivery vehicle.

(b) Licensed wholesalers or their employees shall follow all traffic rules in effect for the county and shall not in any way conduct their business so as to interfere with the flow of traffic in the county.

Sec. 6-226 – 6-249. Reserved.

ARTICLE VI. FARM WINERIES

Sec. 6-250. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Farm Winery means a domestic winery located on premises, a substantial portion of which is used for agricultural purposes, including the cultivation of grapes, berries or fruits to be utilized in the manufacture or production of wine by the winery, or a domestic winery which:

- (1) Makes at least 40 percent of its annual production from agricultural produce grown in this state;
- (2) Is owned and operated by persons who are engaged in the production of a substantial portion of the state agricultural produce used in its annual production; and for this purpose such production of a substantial portion of such Georgia agricultural produce shall be determined by the state revenue commissioner; and
- (3) Produces less than 100,000 gallons per year.

Tasting room means an outlet for the promotion of a farm winery's wine by providing samples of such wine to the public and for the sale of such wine at retail for consumption on the premises and for sale in closed packages for consumption off the premises. Samples of wine can be given complimentary or for a fee.

Sec. 6-251. General authorization; notice to county.

A farm winery which is qualified and licensed by the state shall be allowed to manufacture wine or to distribute such wine at wholesale and at retail at its tasting room; provided that the farm winery has given to the board of commissioners 60 days written notice of its intentions to commence

operations and filed with such notice copies of its license and permits from the state.

Sec. 6-252. Revocation of state license.

When any state wine license issued by the state is revoked by the state revenue commissioner, the permission as above set out by the county shall automatically become invalid.

Alcohol Beverage Ordinance Fee Schedule

Investigative Fee: \$300.00

License Fees:

Beer only: \$750.00

Wine only: \$750.00

Beer/Wine Package Sales: \$1,500.00

Beer/Wine on Premises: \$1,500.00

Farm Wineries: \$750.00

After July 1st of each year: ½ of the License Fee

Sign Fee: \$50.00

Temporary License: \$50.00 per day issued